

Notice of Allowability

Application No.

10/810,190

Examiner

Richard R. Shaffer

Applicant(s)

MICHELSON, GARY K.

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the Amendment filed on 21 April 2006 and Interview on 12 May 2006.
2. ☒ The allowed claim(s) is/are 1-4,6-38 and 42-51.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 4/21/2006
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 5/12/2006
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____


EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Amedeo Ferraro on May 12th, 2006.

The application has been amended as follows:

Claim 1 now reads: A method for stabilizing at least two adjacent vertebral bodies in the cervical human spine, comprising the steps of:

- providing a plate of appropriate length adapted to overlap at least a portion of two adjacent cervical vertebral bodies anteriorly, said plate having at least a first plate segment adapted to be attached to one of the adjacent vertebral bodies to be fused and a second plate segment adapted to be attached to another one of the adjacent vertebral bodies to be fused, the first and second plate segments being in moveable relationship to one another along a longitudinal axis of the plate, the first and second plate segments fastened together by a fastener being detachably attached to at least one of the first and second plate segments so as to permit assembly of the plate segments by the surgeon and complete uncoupling of the first and second plate segments from one another;

- inserting at least a first bone screw through the first plate segment of the plate and into one of the vertebral bodies adjacent the disc space to be fused;

- inserting at least a second bone screw through the second plate segment and into the other of the vertebral bodies adjacent the disc space to be fused;

- locking at least one of the bone screws with at least one bone screw lock adapted to lock to the plate only a single bone screw; and

permitting movement of the first and second plate segments attached to the adjacent vertebral bodies relative to one another in response to movement of the adjacent vertebral bodies.

Claim 3 now reads: A method for stabilizing at least two adjacent vertebral bodies in the cervical human spine, comprising the steps of:

providing a plate of appropriate length adapted to overlap at least a portion of two adjacent cervical vertebral bodies anteriorly, said plate having at least a first plate segment adapted to be attached to one of the adjacent vertebral bodies to be fused and a second plate segment adapted to be attached to another one of the adjacent vertebral bodies to be fused, the first and second plate segments being in moveable relationship to one another along a longitudinal axis of the plate, the first and second plate segments fastened together by a fastener being detachably attached to at least one of the first and second plate segments so as to permit assembly of the plate segments by the surgeon and complete uncoupling of the first and second plate segments from one another;

inserting at least a first bone screw through the first plate segment of the plate and into one of the vertebral bodies adjacent the disc space to be fused;

inserting at least a second bone screw through the second plate segment and into the other of the vertebral bodies adjacent the disc space to be fused;

locking at least one of the bone screws with at least one bone screw lock adapted to lock to the plate only a single bone screw; and

permitting movement of the first and second plate segments attached to the adjacent vertebral bodies relative to one another, the permitting step including the step of allowing but not causing the movement of the adjacent vertebral bodies by movement of the first and second plate segments of the plate.

Claim 5 is cancelled.

Claim 38 now reads: The method of claim 36, wherein the fusion promoting substance is at least bone, hydroxyapatite, or bone morphogenetic protein.

Claim 41 is cancelled.

Reasons for Allowance

The following is an examiner's statement of reasons for allowance of now amended claims 1 and 3 from previously rejected dependent claims 3 and 5. Originally, the examiner rejected dependent claims 3 and 5 under the premise that the method was inherent to the device. However, Mangione et al does not disclose a method having two plate segments **when fastened** together by fastener (16) capable of movement (Column 4, Lines 8-11) relative to one another. Mangione et al rather discloses a device for locking the plates relative to each other when fastened together and allowing for movement when not fixed together.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard R. Shaffer whose telephone number is 571-272-8683. The examiner can normally be reached on Monday-Friday during (7am-5pm).


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Richard Shaffer
May 12th, 2006



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SUPERVISORY PATENT EXAMINER